

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
MATTHEW COLPITTS, *individually and on behalf of all :
other similarly situated,* :
:
Plaintiff, : 20 Civ. 2487 (JPC)
:
-v- :
ORDER
:
BLUE DIAMOND GROWERS, :
:
Defendant. :
:
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JOHN P. CRONAN, United States District Judge:

Defendant Blue Diamond Growers filed its Motion to Dismiss on September 11, 2020 (Dkts. 10, 11, 12), Plaintiff Matthew Colpitts filed his opposition on October 2, 2020 (Dkt. 14), and Defendant submitted its reply on October 16, 2020 (Dkt. 17).

On November 10, 2020, after its Motion to Dismiss was fully briefed, Defendant filed a Notice of Supplemental Authority, alerting the Court to a recent decision in this Circuit. (Dkt. 21). Plaintiff filed a letter responding to Defendant's Notice of Supplemental Authority on November 13, 2020. (Dkt. 24). Four days later, Defendant submitted a letter in reply to Plaintiff's response and requested the Court to strike Plaintiff's submission on the grounds that it includes improper legal argument and caselaw which were available for Plaintiff to include in his opposition brief. (Dkt. 25). After Defendant filed another Notice of Supplemental Authority on January 22, 2021 (Dkt. 29) and Plaintiff submitted a reply to that Notice on January 27, 2021 (Dkt. 31), Defendant requested that the Court strike Plaintiff's reply for the same reasons (Dkt. 32).

Although "it would be ideal for parties to discover and submit all relevant case law before a motion is fully briefed, 'it is fairly standard practice for parties to occasionally send letters or to otherwise file supplemental authority after briefing is complete.'" *Delgado v. Ocwen Loan*

Servicing, LLC, No. 13 Civ. 4427 (NGG) (ST), 2016 WL 4617159, at *7 (E.D.N.Y. Sept. 2, 2016) (quoting *Duprey v. Twelfth Judicial Dist. Court*, No. 08 Civ. 756 (JB), 2009 WL 2951023, at *3 (D.N.M. Aug. 10, 2009)). In this case, Defendant replied to the arguments and caselaw contained in Plaintiff's responses, and therefore would suffer no prejudice from the Court's consideration of both parties' submissions. See *BSC Assocs., LLC v. Leidos, Inc.*, 91 F. Supp. 3d 319, 325 n.6 (N.D.N.Y. 20150) (considering argument raised for the first time in a reply because the opposing party had an opportunity to respond); Dkt. 25 at 2-3 (Defendant responding to Plaintiff's allegedly improper legal arguments); Dkt. 32 at 2-3 (same).

Accordingly, the Court denies Defendant's request to strike Plaintiff's November 13, 2020 and January 27, 2021 letters and will consider both parties' post-briefing arguments in its disposition of Defendant's Motion to Dismiss.

SO ORDERED.

Dated: February 16, 2021
New York, New York



JOHN P. CRONAN
United States District Judge